

RISTEEN MASTERS
and
RONALD MASTERS,

V.

ALLSTATE INSURANCE
COMPANY,

Defendant

Civil No. 99-37-B

Plaintiffs bring this action against their insurance carrier, Allstate Insurance Company (Allstate), alleging that they are due damages under the underinsured motorist provision in their Allstate policy. In addition, Plaintiffs claim in Counts III and IV of their Complaint that Allstate violated Me. Rev. Stat. Ann. tit. 24-A, § 2436 (Late Payment) and Me. Rev. Stat. Ann. tit. 24-A, § 2436-A (Unfair Late Payments Practices). Allstate now moves for summary judgment on Counts III and IV. The Court conducted a hearing on the issues raised in Allstate's motion on August 31, 1999. For reasons stated below, the Court DENIES Allstate's motion.

¹ Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

Summary Judgment Standard

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The Court views the record on summary judgment in the light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993). "A trialworthy issue exists if the evidence is such that there is a factual controversy pertaining to an issue that may affect the outcome of the litigation under the governing law, and the evidence is 'sufficiently open-ended to permit a rational factfinder to resolve the issue in favor of either side.'" *De-Jesus-Adorno v. Browning Ferris Ind. Of Puerto Rico*, 160 F.3d 839, 841-42 (1st Cir. 1998) (quoting *National Amusements v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995)).

Factual Background

Plaintiff Risteen Masters was injured on August 12, 1995, when her automobile collided with an automobile driven by Partrick Larson. After recovering up to the limit permitted under Larson's insurance policy, Plaintiffs sought to recover under their own automobile insurance policy pursuant to the underinsured motorist coverage provision. Plaintiff Risteen Masters notified Allstate on August 12, 1998, that she

intended to claim damages under the underinsured motorist coverage provision. Allstate sent Plaintiffs a letter on September 11, 1998, acknowledging that it received the letter and that it was in the process of organizing Plaintiffs' file. On November 3, 1998, Allstate sent Plaintiffs a letter stating that, after reviewing the information submitted by Plaintiffs, it determined that no payments were due under the underinsured motorist provision.

Discussion

A. Count III - Late Payment Claim

Allstate first argues that it is entitled to summary judgment under the late payment statute because there is no undisputed claim. Me. Rev. Stat. Ann. tit. 24-A, § 2436. The Court finds Allstate's argument unpersuasive. The statute provides that:

A claim for payment of benefits under a policy of insurance against loss delivered or issued for delivery within this State is payable within 30 days after proof of loss is received by the insurer and ascertainment of the loss is made either by written agreement between the insurer and the insured or by filing with the insured of an award by arbitrators as provided for in the policy, *and a claim which is neither disputed nor paid within 30 days is overdue*, provided that if during the 30 days the insurer, in writing, notifies the insured that reasonable additional information is required, the undisputed claim shall not be overdue until 30 days following receipt by the insurer of the additional required information; except that the time period applicable to a standard fire policy and to that portion of a policy providing a combination of coverages, as described in section 3003, insuring against the peril of fire shall be 60 days, as provided in section 3002.

Me. Rev. Stat. Ann. tit. 24-A, § 2436 (*italics added*).

The Law Court has stated that “this section requires an insurer either to dispute a claim or to pay it within thirty days after receipt of an insured’s proof of loss.”

Chiapetta v. Lumbermens Mutual Ins. Co., 583 A.2d 198, 200 (Me. 1990).

Here, while Allstate is correct that it eventually disputed the claim, it neither disputed the claim nor requested any additional information from the Plaintiffs during the thirty day period mandated by the statute. In fact, Allstate did not dispute the claim until November 3, 1998, eighty-three days after Plaintiffs sent their demand letter to Allstate. The Court is satisfied that a trier of fact could find that Allstate violated the statute.

B. Count IV - Unfair Claims Practices Provision

Plaintiffs point to the following provisions of the Unfair Claims Practices statute as the basis of their claim:

1. Civil actions. A person injured by any of the following actions taken by that person's own insurer may bring a civil action and recover damages, together with costs and disbursements, reasonable attorney's fees and interest on damages at the rate of 1 1/2% per month;

B. Failing to acknowledge and review claims, which may include payment or denial of a claim, within a reasonable time following receipt of written notice by the insurer of a claim by an insured arising under a policy;

D. Failing to affirm or deny coverage, reserving any appropriate defenses, within a reasonable time after having completed its investigation related to a claim; or

E. Without just cause, failing to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear.

Me. Rev. Stat. Ann. tit. 24-A, § 2436-A.

Allstate maintains that it is entitled to summary judgment because, as a matter of law, the time it took to respond to Plaintiffs' demand letter was reasonable. To support this proposition Allstate points to *NE Properties v. Chicago Title Ins. Co.*, 660 A.2d 926 (Me. 1995). However, the Law Court's holding in *NE Properties* is distinguishable from this case. In *NE Properties* Chicago Title asked NE Properties to forward additional information regarding its claim, but NE Properties never forwarded the information to Chicago Title. Six months later Chicago Title notified NE Properties that it would not defend the claim. The Law Court determined that, "As a matter of law, Chicago Title's response, approximately 6 months after formal notification, *and before any response to its request for further information*, did not violate the unfair claims practices provision." *NE Properties*, 660 A.2d at 928 (italics added).

Here, Allstate never made a request for additional information. While Allstate did notify Plaintiffs that it was in the process of organizing their file on September

11, 1998, no notice was given that it disputed the claim until November 3, 1998, eighty-three days after Plaintiffs sent their demand letter. The Court is satisfied that a trier of fact could determine that eighty-three days was an unreasonable time for Allstate to acknowledge and review Plaintiffs' claim. Further, the Court is satisfied that a trier of fact could find that it was unreasonable amount of time for Allstate to deny coverage to the Plaintiffs.²

Conclusion

For the reasons stated above, the Court DENIES Allstate's motion for summary judgment.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated on: September 20, 1999

² For the first time, Plaintiffs argued in their response that they are also asserting that Allstate violated subsection (e) of Me. Stat. Rev. Ann. tit. 24-A, § 2436-A. Allstate did not address this claim in its summary judgement motion and the Court does likewise here.